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**Via Electronic Filing**

Ms. Marlene Dortch, Secretary  
Federal Communications Commission  
445 Twelfth Street, S.W., Room TW-B204  
Washington, DC 20554

Re: *Notice of Ex Parte Presentation: Implementation of the Telecommunications Act of 1996: Accounting Safeguards Under the Telecommunications Act of 1996, CC Docket No. 96-150.*

Dear Ms. Dortch:

Yesterday, May 8, 2002, Michael Hunseder of Sidley Austin Brown and Wood representing AT&T, Aryeh Friedman and I, met with Mark Stone, Hugh Boyle, Andre Rausch, Marvin Gentry, Patricia Green and Mark Stephens to discuss AT&T's comments in the above mentioned proceeding. The attached document was used as outline for those discussions.

Consistent with the Commission rules, I am filing one electronic copy of this notice and request that you place it in the record of the proceedings.

Sincerely,

A handwritten signature in black ink, appearing to read "Patrick H. Merrick".

Attachment

cc: Mark Stone  
Hugh Boyle  
Andre Rausch  
Marvin Gentry  
Patricia Green  
Mark Stephens

**AT&T COMMENTS:**  
**VERIZON BIENNIAL 272 AUDIT**

**General:**

- Because the audit procedures were incomplete, the audits could not provide any basis to conclude that Verizon is complying with Section 272
- Despite the faulty procedures, the audits nonetheless demonstrate substantial violations of Section 272
- Remedy:
  - 1) assess substantial penalties on Verizon;
  - 2) issue public order defining more rigorous audit standards in future 272 proceedings

**Compliance With Section 272 Is Critical To Fair Competition**

- BOCs retain significant market power after 271 approval, and section 272 is of “crucial importance” to ensure competition in all telecom markets, and particularly in interLATA markets, is conducted on a “level playing field”
- In particular, section 272 seeks to prohibit
  - 1) **discrimination** in favor of BOC interLATA affiliates and
  - 2) **cross-subsidization** and other improper cost allocation

**The Audits Must Provide a “Thorough and Systematic” Evaluation of BOC Compliance**

- the 272 Audit must be broad, and, as even the BOCs admit, must “fully test” a BOC’s compliance with section 272
- Audits play a “critical role” in enforcement and should reveal whether BOC is in fact discriminating or misallocating costs

**These Audits Were Inadequate To Test Verizon’s Compliance**

- The Audit had numerous general flaws:
  - 1) over-reliance on sampling, and sampling not performed properly
  - 2) BOC failure to maintain data critical to determine discrimination, cost allocation
  - 3) incomplete assessment (e.g., formal complaints)

**Audits Nevertheless Show Significant Discrimination Against Competitors**

- 5 performance measures on Special Access, 1 on PIC Changes
- Numerous problems with these 6 measures:
  - 1) data often unavailable because Verizon failed to maintain it
  - 2) auditor could not independently verify data
  - 3) measures chosen were not properly disaggregated
  - 4) audit measures failed to ascertain whether discrimination occurs when BOC provides special access directly to customer, rather than through 272 affiliate (this appears to be a significant area of discrimination)

Audit should use measures AT&T outlined in Special Access Docket (CC Docket 01-321, filed Jan. 22, 2002)

**Special Access**

- Data nonetheless reinforce NYPSC finding from June 2001 that Verizon is discriminating against IXC competitors in providing special access. (NPRM in

Special Access Proceeding also described numerous complaints with special access performance)

- *Virtually every measure shows discrimination in favor of Verizon Affiliates*  
much longer installation intervals, more repairs, and more untimely provisioning for competitors  
--Verizon says data incomplete – however, they failed to maintain data

#### PIC Process

- Audit only measured PIC change interval – and found discriminatory performance. But there are other ways that BOCs manipulate the PIC change process to favor their affiliates: E.g., PIC Freeze Process (Verizon systematically imposes PIC freezes for its affiliates LD customers, but ignores PIC freezes for competing IXCs' customers) AT&T placed 3 test calls, and each demonstrated discriminatory conduct by Verizon. The audits did not attempt to measure this.

#### Joint Marketing

- Audit inquiry on joint marketing activities was patently inadequate: Audit appeared to examine only a handful of calls, yet still found an apparent violation (provides critical information for enforcement that is not otherwise collected)
- Where audits find some instances of discrimination, it should investigate more rigorously

#### **Audits Also Show Violations of Cost Allocation Rules**

- impossible to determine compliance with many requirements, e.g., FCC prohibition on joint provision of OI&M (provides “substantial” opportunity for cost misallocation)
- Nevertheless, even the audit’s limited scope again revealed significant and repeated violations of other requirements  
E.g., Internet Posting Requirements: Audit reveals **40 percent** of postings are insufficient under Commission rules (SBC recently fined for web posting violations)
- At bottom, the audit cannot possibly shed light on whether Verizon is engaging in cross-subsidies with affiliate: further investigation necessary  
BOCs retain significant incentive to engage in price squeeze: e.g., in Texas, intrastate access priced at 6 cents, yet SBC retails long distance for as low as 6 cents. There must be cost allocation problem, and audit must be designed to uncover facts that shed light on cost allocation.

#### **Audit Process Should Be Reinvigorated**

- These audits serve as a precedent for all future 272 audits
- Commission should impose substantial penalties on Verizon (like in merger/271)
- Commission should re-audit Verizon and also adopt more detailed guidelines and standards for audits, including
  - 1) strong preference for examining entire population, rather than sampling; where sampling occurs, disclose all critical data
  - 2) audit should examine longer period, and where BOC does not maintain adequate data, should be a presumption of non-compliance
  - 3) adopt more rigorous and better-defined performance measurements (as described in AT&T Comments in Special Access docket)
  - 4) strengthen a number of the standards, e.g. joint marketing
  - 5) develop guidelines for remedies and penalties